



STATE OF ARKANSAS  
**Department of Finance  
and Administration**

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March 27, 2007

Arkansas Tech University  
Department of Music  
V. Andy Anders, Department Head  
407 W. Q Street, WPN 107  
Russellville, AR 72801

Re: Advisory Opinion #483-07-01

Dear Mr. Anders:

This letter is in response to your request for an advisory opinion pursuant to ACA Section 19-11-715 (b).

Your request for an advisory opinion is based on the following facts:

- 1) Hal Cooper, Sr. is the band director at Arkansas Tech University.
- 2) Hal Cooper, Jr., owns Cooper Band Instrument and Repair, Inc. in Russellville.
- 3) V. Andy Anders is the head of the Department of Music at Arkansas Tech University.
- 3) There are no other instrument repair shops located in Russellville.
- 4) The instrument repair line item in the departmental budget is controlled by the department head, not Mr Cooper, the band director. Decisions and authorizations for repair are made by the department head.
- 4) You are seeking a waiver of A.C.A. § 19-11-705 to allow Cooper Band Instrument and Repair, Inc. to contract with Arkansas Tech University to provide emergency and maintenance repair services for Arkansas Tech's music department.

A.C.A. § 19-11-705, Employee conflict of interest, prohibits contracts with family members or employees who "participate" in the procurement process. The definition of "direct or indirect participation" at A.C.A. §19-11-705(a)(2) includes, but is not limited to, "involvement through decision, approval, disapproval, recommendation, preparation of any part of a procurement request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity." The position of employment and/or an employee's "participation" in the procurement process, both "direct" and "indirect" must be examined on a case by case basis.

In the case at hand, as long as Hal Cooper, Sr. has no direct or indirect participation in the procurement process associated with contracts between Cooper Band Instrument and Repair, Inc. and Arkansas Tech University, there is no conflict, and no prohibition to contracting.

Accordingly, Arkansas Tech University is not prohibited by statute from contracting with Cooper Band Instrument and Repair, Inc. as a result of Mr. Cooper, Sr.'s position as long as Mr. Cooper, Sr. does not participate in the procurement process, and a waiver of A.C.A. § 19-11-705 is not necessary .

This advisory opinion is issued in accordance with A.C.A. §19-11-715(b) and compliance with the above course of conduct is deemed to constitute compliance with the ethical standards of the Act.

Sincerely,

Richard A. Weiss

CC:  
Joe Giddis, OSP